HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI

MAIN CASE NO.: **A.S.No.284 of 2006**

PROCEEDING SHEET

Sl. No.	Date	ORDER	OFFICE NOTE
32.	12.04.2022	**SRS,J** **I.A.No.2 of 2021** This interlocutory application is filed under Order I Rule 10 read with Section 151 of CPC to implead proposed respondents 8 to 17 as party respondents to A.S.No.284 of 2006. In the affidavit filed in support of the petition, it was contended that when the appeal was listed for final hearing the appellants engaged the present counsel to argue the matter on their behalf. While preparing for arguments, the counsel informed them about the non-joinder of daughters of late Venkata Ramaiah, as parties. It was further averred that the Advocates who dealt with the matter in the trial stage and subsequently in the appeal informed them that in view of the amended provision of the Hindu Succession Act, 2005, it is not applicable and hence there is no need to join female heirs as parties. It is further averred that on the advice of learned counsel, interlocutory application is filed to implead living daughters and grand-daughters of late Venkata Ramaiah proposed parties as respondent Nos. 8 to 17. 1st respondent to the petition, i.e 1st respondent in the appeal and 1st defendant in the suit filed counter and opposed the petition. In the counter it was contended *inter alia* that basing on the averments made in the written statement, Trial Court framed specific issue qua non-joinder of necessary parties i.e. non-impleadment of daughters of late Venkata Ramaiah. Having suffered decree, petitioners filed the appeal and when the appeal is listed for final hearing I.A was filed. It was contended that non-impleadment of proposed parties is not a curable defect. When an objection was raised in the year, 2002	

		itself the appellants/plaintiffs without choosing to implead the proposed parties, continued the suit proceedings. It was further averred in the counter affidavit that the proposed respondent No.17 was examined as DW6 and the mother of proposed respondents Nos.14 to 16 was examined as DW5. Hence, prays to dismiss the petition. **I.A.No.1 of 2020** This application is filed by Smt. Meka Sarojini claiming to be daughter of late Venkata Ramaiah. In the affidavit filed in support of the petition it was contended that she is co-sharer along with others, in suit schedule property. She was not made as party defendant to the suit. It is further averred that she is not aware of the suit proceedings and after coming to know about pendency of the appeal through other relatives, she filed the present petition. 1st Respondent filed counter opposing the petition. Heard Sri Raja Reddy Koneti, learned counsel for the petitioners in I.A.No. 2 of 2021 and Sri Siva Sankara Rao Borra learned counsel for petitioner in I.A.No. 1 of 2021 and Sri E.V.S.S.Ravi Kumar, learned counsel for respondent No.1 in both interlocutory applications. Appellants filed I.A.No. 2 of 2021 seeking impleadment of living daughters and grand-daughters of late Venkata Ramaiah. One of the daughter of late Venkata Ramaiah filed I.A.No. 1 of 2020. The petitioner in I.A.No. 1 of 2020 is shown as proposed party respondent in I.A.No. 2 of 2021. Undisputed facts are that late Venkata Ramaiah is blessed with three sons namely Satyanarayana, Krishna Murthy and Surya Chandra Rao and five daughters. Partition took place among late Venkata Ramaiah and his three sons on 28.11.1957. In the said partition, the suit schedule properties in O.S.No.23 of 2011 fell to the share of late Venkata Ramaiah. Said Venkata Ramaiah died on 17.01.1986 leaving behind him wife, three sons and five daughters.	

		According to plaintiffs in the suit, late Venkata Ramaiah died intestate on 17.01.1986 hence his wife and three sons succeeded the estate of Venkata Ramaiah as per the provisions of the Hindu Succession Act, 1956. Hence, the suit was filed partition. Plaintiffs' father, Satyanarayana one of the sons of Venkataramaiah also died nearly a month of death of Venkataramaiah. In the written statement filed by defendant No.1 in the suit i.e. respondent No.1 herein, it was specifically pleaded at para No.7 that the suit is bad for non-joinder of necessary parties. It was further averred that late Venkata Ramaiah has three sons and five daughters and plaintiffs' father, Satyanaryana is the eldest son of late Venkata Ramaiah and he died leaving behind him his wife, four sons and one daughter. The wife and daughter of late Satyanarayana were also not arrayed as party defendants in the suit. Respondent No.1/defendant No.1 also pleaded about Will, dated 29.12.1985 executed by late Venkata Ramaiah in favour of defendant No.1 and fifth daughter, and the same was marked as Ex.B1. Basing on the pleadings, Trial Court framed necessary issues and one of the issues framed is whether the suit is bad for non-joinder of necessary parties? By judgment, dated 30.01.2006, the Trial Court dismissed the suit. While considering issue No.2 Trial Court came to the conclusion that daughters of late Venkata Ramaiah are also necessary parties to the suit, however, they were not impleaded as parties to the suit. Therefore, Court held that the suit filed by the plaintiffs is bad for non-joinder of necessary parties. Against the said judgment the present appeal is filed. The averment in the affidavit and the argument of learned counsel Sri Raja Reddy Koneti with regard to knowledge and legal implications qua non impleadment do not have merit. The petitioners are aware of the plea of the 1st respondent. Trial Court framed issue and held against the petitioners in I.A.No. 2 of 2021.	

Learned counsel for the 1st respondent relied upon (1) Naba Kumar Hazra and another v. Radhashyam Mahish and others 1931 SCC Online PC 52; (2) Jahangiriji v. K. Kumar 202(4) ALT 253 and (3) Kanakarathanammal v. V.S. Loganatha Mudaliar and another AIR 1965 SC 271.

In Naba Kumar Hazra and another Vs Radhashyam Manish and others it was held that :

> "In a case where the defect has been brought to the notice of the party concerned from the very outset of the proceedings and he has had ample opportunity of remedy it. A party cannot be allowed to be added at the time of hearing of an appeal before the Privy Council when such a course, would necessitate a commencement of proceedings *de novo."*

In Kanakarathanammal' case, the Hon'ble Apex Court held as follows:

> "Para 14: We do not think there is any justification for allowing the appellant to amend her plaint by adding her brothers at this late stage. We have already noticed that the plea of non-joinder had been expressly taken by respondents 1 and 2 in the trial Court and a clear and specific issue had been framed in respect of this contention. While the suit was being tried, the appellant might have applied to the trial Court to add her brothers, but no such application was made. Even after the suit was dismissed by the trial Court on this ground it does not appear that the appellant moved the High Court and prayed that she should be allowed to join her brothers even at the appellate stage, and so, the High Court had no occasion to consider the said point. The fact that the High Court came to the contrary conclusion on the question of title does not matter, because if the appellant wanted to cure the infirmity in her plaint, she should have presented an application in that behalf at the hearing of the appeal itself. In fact, no such application was made even to this Court until the appeal was allowed to

stand over after it was heard. Under the circumstances, we do not think it would be possible for us to entertain the said application. In the result, the application for amendment is rejected."

It was pointed in the written statement about non impleadment of all the sharers and prayed the Court to dismiss the suit. Appellants/plaintiffs are aware of such plea and proceeded with trial of the suit. Trial Court framed an issue. Having suffered decree, appeal was filed and when the appeal is taken up for hearing, I.A.Nos.2 of 2021 was filed by appellants and I.A.No. 1 of 2021 was filed by one of the daughters of late Venkataramaiah. The reasons assigned in the affidavit do not inspire confidence of this Court. The petitioners in I.A.No. 2 of 2021, having taken risk and proceeded with trial of the suit without proper parties and suffered a decree, will not be permitted to cure that defect in the appeal.

Insofar as I.A.No. 1 of 2021 is concerned, the averment that deponent is not aware of suit and other proceedings is unbelievable. The affidavit is silent about the knowledge except bald averments. Hence, I.A.No. 1 of 2021 lacks *bonafides*.

There are no merits in the interlocutory applications and accordingly, they are dismissed. However, without costs.

SRS,J

A.S.No.284 of 2006

List this appeal on 20.04.2022, for hearing.

SRS,J

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